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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

NO. 706

THE PITTSBURGH NATIONAL BANK, Executor of the Estate of Frank E. Mower, Deceased, Petitioner

v.

EQUITABLE GAS COMPANY

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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OPINIONS BELOW

Petitioner's reference to the official and unofficial reports of the opinions delivered in the Courts below is not correct when it states that the opinion of the court en banc of the Court of Common Pleas of Allegheny County, Pennsylvania, is reported at 114 P.L.J.[1] 1. It is only the opinion of the trial judge that is reported at 114 P.L.J. 1. The opinion of the court en banc is not reported.

1. Pittsburgh Legal Journal.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (3). The petitioner contends that the 5th and 14th Amendments to the Constitution of the United States are involved in the instant case. Petitioner asserts that its decedent's property was taken without just compensation or due process of law because the Supreme Court of Pennsylvania reversed a former decision which made a distinction between urban and rural highways with respect to the extent of the public easement in highways and held, as do the vast majority of the States, that the installation of a gas pipe line or other common public utility facility in any public highway does not impose an additional servitude on an abutting property and entitle the owner of such a property to compensation.

QUESTIONS PRESENTED

1. Does the law of a State that the laying of a common utility, such as a gas line, wholly within a public highway in a borough, does not entitle an abutting property owner to damages, violate the United States Constitution?

2. Is the judgment of the State court based upon an adequate and independent nonfederal ground where the State law is that the laying of a common utility, such as a gas line, wholly within a public highway in a borough, does not entitle an abutting property owner to damages and the gas line in question was in fact laid wholly within a public highway in a borough?

3. Is the United States Constitution violated where a State court, in view of the fact that present-day townships and so-called rural areas are a far cry from the backwoods they were once pictured and modern conveniences, such as gas heat and electric light, are today commonplace and accepted as a way of life in virtually all rural homes, overrules an old distinction between township highways and city and borough highways with respect to the extent or scope of the public easement in highways and declares that the same rule, which theretofore applied to city and borough highways, shall apply to all highways in the State?

STATEMENT OF THE CASE

The respondent gas company, a public utility, in 1956 laid a gas distribution pipe line wholly within the confines of Beatty Road, a public highway, in Monroeville Borough, Allegheny County, Pennsylvania (R. 35a, 87a, 92a, 96a, 100a, 104a, 139a, 142a[2]). The pipe line was laid entirely within the lines of the highway, along the frontage of the property of plaintiff's decedent (hereinafter called "Mower property") and *no part of the Mower property was physically taken* (R. 20a, 34a, 57a, 73a-78a, 96a, 100a, 104a, 123a, 125a, 127a, 129a, 131a). The pipe line, laid within the right of way of the public highway along the Mower property, is part of a gas distribution pipe line laid from a gas pipe line of Texas Eastern Corporation in Salem Township, Westmoreland County, Pennsylvania, to Peterman's Corner in Penn Township (now Penn Hills), Allegheny County, Pennsylvania, in order to furnish an adequate supply of gas to the eastern side of respondent's distribution system, including the distribution system for the residents of Monroeville Borough, one of the fastest growing communities in Allegheny County,[3] and adjacent communities (R. 38a, 48a-49a, 62a-63a, 143a).

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2. Record references followed by "a" are to the Record printed for the Supreme Court of Pennsylvania. Those followed by "b" are to the Supplemental Record of Appellee in that Court. Respondent cannot give record references to the Record, as renumbered and enlarged, filed with this Court since it was not furnished with a copy of such Record.

3. Contrary to the impression petitioner tries to create, Monroeville is urban and not rural and also the

When this pipe line was laid the Mower property was owned by Frank E. Mower, the decedent, and his wife, as tenants by the entireties (R. 16a, 138a) and that property and the public highway on which it abutted, Beatty Road, were located in Monroeville, which was then a borough, having been incorporated as such on January 25, 1951, almost five years before the pipe line was laid, by an order of the Court of Quarter Sessions of Allegheny County (R. 30a, 89a-90a, 138a). Prior to 1951, and in 1921 when Frank E. Mower and his wife acquired title to the property, the Mower property and the portion of Beatty Road on which it fronted were located in Patton Township.

There is no public record or other evidence to show when or how Beatty Road was established. There is a proceeding in the Court of Quarter Sessions of Allegheny County under which Allegheny County took over Beatty Road for maintenance (R. 133a). It is clear that Beatty Road has been in existence and a public highway from time immemorial and that, at least since February 27, 1915, to the present time, it has been and is a public highway under the control and care of Allegheny County (R. 141a-142a).

Because the pipe line was laid in a public highway located in a borough and it has been the law in Pennsyl-

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fastest growing community in Allegheny County. United States Census figures show that its population grew from 7,841 in 1950 (the last year in which the area was Patton Township) to 22,246 in 1960. In the past twenty-five years innumerable plans of lots have been laid out and developed and extensive industrial and commercial establishments have been located and built in that community.

vania at least since 1894, as laid down in the leading case of *McDevitt v. The People's Natural Gas Co.*, 160 Pa. 367, 28 A. 948, that a gas company may install its pipe lines in city and borough highways without the payment of any compensation to abutting property owners because the pipe lines do not constitute an additional servitude on the abutting properties, the respondent gas company did not institute any condemnation proceedings or offer to pay any damages to the Mowers and refused to accede to the demand of the Mowers for the payment of damages (R. 5a-6a, 11a, 45a-48a). The Mowers, therefore, commenced this action of trespass against the respondent.[4]

At the trial, petitioner elected to consider the alleged trespass as an appropriation of a right of way for the pipe line and to have the damages determined as if the suit were an eminent domain proceeding (R. 63a, 143a).

The trial judge recognized that the real issue in the case at bar was an issue of law for the court but decided to reserve decision, instead of ruling forthwith,

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4. The suit was commenced by Frank E. Mower and Viola B. Mower, his wife, by a praecipe for a writ of summons (R. 1a). Viola B. Mower died before a complaint was filed (R. 5a). A complaint was thereafter filed by Frank E. Mower alone (R. 3a) and the caption of the case was amended by removing the wife plaintiff as a party to the suit (R. 1a). Frank E. Mower died a little more than a year after the complaint was filed (R. 13a). More than two years after his death and about a month before the trial, the petitioner was substituted as the party plaintiff (R. 13a).

on respondent's motion for a directed verdict.[5] Accordingly, the trial judge submitted to the jury only a special interrogatory, namely, if it should be decided, as a matter of law, that petitioner was entitled to damages what was the amount of the difference, if any, between the fair market value of the property before and after the pipe line was laid (R. 92a, 103a, 108a-111a, 137a). The jury returned a special verdict that the amount of that difference was $9,700 (R. 137a).

Petitioner tries to mislead this Court when it states (Petition, p. 4) that "There was no dispute among the real estate experts for both parties as to the fact that there was actual money damage to decedent" in this case. The petitioner deliberately ignores and conceals from this Court the essential fact that the opinions of respondent's experts as to possible damage were expressly predicated on the assumption that, as a matter of law, an additional servitude was imposed upon the petitioner's property by the gas line and that any such opinion was expressly given subject to the decision by the court on the question of whether any additional servitude was imposed by the gas line (R. 7b). It has always been respondent's position that the plaintiff's property was not damaged whatever by the laying of the gas line wholly within the public highway and that the plaintiff was not entitled to recover anything (R. 10a, 11a, 102a, 116a, 137a, 168a).

The trial judge decided that the petitioner was entitled to recover compensation, even though the public highway was located in a borough when the pipe was

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5. Sometimes called, under Pennsylvania procedure, written point for binding instructions.

laid entirely within the confines of the highway, because, when the public highway was established and when petitioner's decedent acquired the property, the highway and the property were located in a township (R. 161a). The trial judge incorrectly reasoned, in the face of persuasive and weighty authority that there can be no vested right, in the constitutional sense, to a continuance of an existing status quo or general law,[6] that petitioner's decedent had a vested right to the continuance of the so-called "township rule", enunciated in *Sterling's Appeal,* 111 Pa. 35, 38-39, 2 A. 105, which could not be, in any manner, taken away without infringement of the 5th and 14th Amendments to the Constitution of the United States (R. 161a). The trial judge entered an order that the special verdict be filed of record and that judgment be entered thereon (R. 166a-167a). The respondent thereupon, in accordance with applicable Pennsylvania procedure, filed a motion for judgment non obstante verdicto (R. 168a).

A court en banc, consisting of the trial judge and another judge of the Court of Common Pleas of Allegheny County, adopted the reasoning of the trial judge and refused respondent's motion for judgment n.o.v. (R. 183a-184a, 190a, 192a-193a). Judgment was entered against the respondent in the amount of the special verdict, as amended by the court en banc to add detention money (R. 2a-3a, 192a-193a). The appeal by respondent to the Supreme Court of Pennsylvania followed.

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6. See: *North American Co. v. S.E.C.* 327 U.S. 686, 708; *United States v. Philadelphia,* 140 F. 2d 406, 408 (C.C.A. 3); *Catherwood Trust,* 405 Pa. 61, 70, 173 A. 2d 86; 2 Cooley *Constitutional Limitations* (8th ed.), p. 749; 16 Am. Jur. 2d, p. 762.

The Supreme Court of Pennsylvania after the case was fully briefed and argued by counsel for the parties,[7] unanimously reversed the judgment of the trial court and entered judgment for the defendant. It appears from the exemplary opinion written by Mr. Justice Eagen that five members of the Supreme Court of Pennsylvania decided to follow the course, often followed by this Court,[8] of refusing to perpetuate an obsolete rule by blind adherence to the principle of stare decisis and, instead, molding the law to fit modernized living conditions. Accordingly, it was held that the time had come for Pennsylvania to join the vast majority of the other States which hold that all public highways may be used for modern public uses which have become commonplace by the evolution of civilization, even though such uses were not in existence and therefore not in contemplation at the time the highways were established. The other two members of the Supreme Court of Pennsylvania, concurring in the result, apparently recognized that the judgment of the Court is required by the preexisting State law.

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7. Several amicus curiae filed briefs urging the Court to overrule the decision relating to township roads in *Sterling's Appeal,* 111 Pa. 35, 2 A. 105.

8. See: *Brown v. Board of Education of Topeka,* 347 U.S. 483, 492-495; *Erie Railroad Co. v. Tompkins,* 304 U.S. 64, 74. Also see: dissenting opinion of Mr. Justice Brandeis in *Burnet v. Coronado Oil & Gas Co.,* 285 U.S. 393, 406.

SUMMARY OF ARGUMENT

The State Court interpreted the law of the State and determined, like the vast majority of other state courts, that the installation of common utility lines in a public highway does not impose an additional servitude on abutting properties and entitle their owners to additional compensation. It is well settled that it is for the state courts to declare what the state law is, particularly with respect to real property rights. *United States v. Fox,* 94 U.S. 315, 320; *Sauer v. New York,* 206 U.S. 536, 548; *Brinkerhoff-Faris Co. v. Hill,* 281 U.S. 673, 680; *United States v. Burnison,* 339 U.S. 87, 91. A state court may overrule a prior decision by it and in doing so may follow the doctrine that the revised law shall apply to the instant case before it. Such action by a state court does not violate the Federal Constitution. *Tidal Oil Co. v. Flanagan,* 263 U.S. 444, 450; *Brinkerhoff-Faris Co. v. Hill,* 281 U.S. 673, 680; *Great Northern Railway Co. v. Sunburst Oil & Refining Co.,* 287 U.S. 358, 365.

Accordingly, the Supreme Court of Pennsylvania was correct in its decision on the merits, the State Court decision is based on an adequate nonfederal ground, there was no denial of due process guaranteed by the Federal Constitution, and there is no federal question involved in the case at bar.

Certiorari should therefore be denied.

ARGUMENT

A perusal of the opinion of the Supreme Court of Pennsylvania abundantly demonstrates that it decided purely a matter of state law regarding the uses to which an already existing public highway easement in that State may be put to provide necessary and essential public utility services to the public. It is also clear, from the concurrence of two of the members of the State court, that the result reached in the instant case is and may be adequately supported on the status of the State law as of the time when respondent's pipe line was laid and without overruling any prior State precedent. Such questions are and must be for the final determination of the State court. That the State court only decided a question of State law and was not required to and did not reach any Federal question is plain from the opinion of Mr. Justice Eagen for the Supreme Court of Pennsylvania. Speaking for that Court, he declared (Petition, Appendix C, p. 61):

> "Since our decision concerns only the degree of use to which an already existing public easement may be put, the constitutional questions raised here and below are not relevant."

It is too well settled to justify extended discussion that the courts of a state have the power to interpret and declare the laws of the state and that where, as here, a state court decision is and may be based upon a nonfederal ground and the nonfederal ground is adequate to support the judgment it is not open to review by this Court. *Enterprise Irrigation District v. Farmers Mutual Canal Co.*, 243 U.S. 157, 164-166; *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 673, 680; *Fox Film Corp. v. Muller*, 296

U.S. 207, 210; *Moffett v. Commerce Trust Co.*, 329 U.S. 669; *Superior Court of California v. Lillefloren*, 335 U.S. 906.

Moreover, the decision of the Supreme Court of Pennsylvania is correct and in full accord with the decisions of the vast majority of the other State courts which have considered and passed upon the same question involved in this case. The vast majority of the courts have held that public highways were taken or dedicated for all reasonable means of transportation of persons and commodities which the advance of civilization may evolve and that the servitude imposed by highway easements expands to accommodate improvements in methods and means used to transport passengers and commodities, without any additional compensation to the owners of the abutting properties who own the fee subject to the highway easement. These courts have correctly observed that all damages for such uses were included in the assessment of compensation for the original laying out of the highway. For example, see *United States v. Oklahoma Gas Co.*, 318 U.S. 206, 209; *Padgett v. Arkansas Power & Light Co.*, 226 Ark. 409, 413-414, 290 S.W. 2d 426; *Sears v. Crocker*, 184 Mass. 586, 587-588, 69 N.E. 327; *Peabody v. Boston*, 220 Mass. 376, 377-378, 107 N.E. 952; *Smith v. The Central Power Co.*, 103 Ohio St. 681, 137 N.E. 159; *State ex rel. York v. Walla Walla County*, 28 Wash. 2d 891, 903, 184 P. 2d 577; *Hardman v. Cabot*, 60 W. Va. 664, 667-669, 55 S.E. 756; 3 Nichols, *Eminent Domain* (3rd ed.) § 10.1 (p. 342 et seq.) and cases there cited; 1 Elliott, *Roads and Streets* (4th ed.) § 502 (p. 565); 25 Am. Jur., p. 462.

An excellent, but lengthy, exposition of this principle is the concurring opinion of the Chief Justice of the Ohio Supreme Court in *Smith v. The Central Power Co., supra,* at 691-695. The principle is also logically, but more concisely, set forth in the opinion of Chief Justice Rugg for the Supreme Judicial Court of Massachusetts in *Peabody v. Boston, loc. cit. supra,* thusly:

> "The public acquired the right to use the land, within the boundaries of the taking of the easement of travel, for all reasonable means of transportation for persons and commodities which the advance of civilization may render suitable for a highway. The fee of the land remains in the landowner, who may use it in any reasonable way not inconsistent with the paramount right of the public easement which is coextensive with the limits of the highway. When the needs of the public for the purpose of travel increase, they are superior and the landowner must withdraw even to the extent of being quite excluded. (Citations) . . . Included in the same public right is the subterranean use of the streets for travel. *Sears v. Crocker,* 184 Mass. 586. All damages for these and such like uses were included in the assessment of compensation for the original laying out of the highway. No constitutional right of the abutting landowner is invaded by the exercise of the rights acquired by the public but suffered to lie dormant for a time."

An analysis of the petition for writ of certiorari filed in the case at bar shows that the position of the petitioner is that its decedent had a property right in a court decision or prior precedent of State law which

could not be overruled without violating the Constitution of the United States. The petitioner contends that state court decisions should and may make law for the future only. The mere statement of this argument plainly demonstrates that it is wrong, wholly without merit and specious. On the contrary, it is a long established prineiple of law that *stare decisis* is not an inexorable command and that courts, like this Court, may and should overrule an earlier decision when improved living conditions or other changes wrought by an evolving society render a former decision incongruous. What Mr. Justice Holmes observed in his dissenting opinion in *Kuhn v. Fairmont Coal Co.*, 215 U.S. 370, is peculiarly apposite (p. 372):

> "I know of no authority in this court to say that in general state decisions shall make law only for the future. Judicial decisions have had retrospective operation for near a thousand years."

In *Tidal Oil Co. v. Flanagan*, 263 U.S. 444, this Court by Mr. Chief Justice Taft, said (p. 450):

> "The parties to this action have been fully heard in the state court in the regular course of judicial proceedings and in such a case the mere fact that the state court reversed a former decision to the prejudice of one party does not take away his property without due process of law."

The applicable principle was stated by Mr. Justice Brandeis for this Court in *Brinkerhoff-Faris Co. v. Hill*, 281 U.S. 673, thus (p. 680):

> "It is true that the courts of a State have the supreme power to interpret and declare the written and unwritten laws of the State; that this Court's

power to review decisions of state courts is limited to their decisions on federal questions; and that the mere fact that a state court has rendered an erroneous decision on a question of state law, or has overruled principles or doctrines established by previous decisions on which a party relied, does not give rise to a claim under the Fourteenth Amendment or otherwise confer appellate jurisdiction on this Court."

And in a note to the opinion Mr. Justice Brandeis observed (p. 681):

> "The process of trial and error, of change of decision in order to conform with changing ideas and conditions, is traditional with courts administering the common law. Since it is for the state courts to interpret and declare the law of the State, it is for them to correct their errors and declare what the law has been as well as what it is. State courts, like this Court, may ordinarily overrule their own decisions without offending constitutional guaranties even though parties may have acted to their prejudice on the faith of the earlier decisions."

In *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, this Court, in an opinion by Mr. Justice Cardozo, declared (pp. 364-365):

> "A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may say that decisions of its highest court, though later overruled, are law none the less for intermediate transactions. Indeed there are cases intimating, too broadly (cf. *Tidal Oil Co. v.*

Flanagan, supra), that it *must* give them that effect; but never has doubt been expressed that it *may* so treat them if it pleases, whenever injustice or hardship will thereby be averted. [Citations] On the other hand, it may hold to the ancient dogma that the law declared by its courts had a Platonic or ideal existence before the act of declaration, in which event the discredited declaration will be viewed as if it had never been, and the reconsidered declaration as law from the beginning. [Citations] The alternative is the same whether the subject of the new decision is common law (*Tidal Oil v. Flanagan, supra*) or statute. [Citations] The choice for any state may be determined by the juristic philosophy of the judges of her courts, their conceptions of law, its origin and nature."

Singularly appropriate to the instant case is the following holding by this Court in *Sauer v. New York,* 206 U.S. 536 at 548:

"The right of an owner of land abutting on public highways has been a fruitful source of litigation in the courts of all the States, and the decisions have been conflicting, and often in the same State irreconcilable in principle. The courts have modified or overruled their own decisions, and each State has in the end fixed and limited, by legislation or judicial decision, the rights of abutting owners in accordance with its own view of the law and public policy. As has already been pointed out, this court has neither the right nor the duty to reconcile these conflicting decisions nor to reduce the law of the various States to a uniform rule which it shall announce and im-

pose. Upon the ground, then, that under the law of New York, as determined by its highest court, the plaintiff never owned the easements which he claimed, and that therefore there was no property taken, we hold that no violation of the Fourteenth Amendment is shown."

The cases which the petitioner cites to support its contention that the alleged retroactive enlargement of the public easement in a highway infringes the Federal Constitution are plainly distinguishable and inapposite.

In *Pennsylvania Coal Co. v. Mahon,* 260 U.S. 393, the defendant coal company owned certain coal and the right to mine all of it without any liability for surface damage. The Pennsylvania legislature, claiming the right under the police power, enacted a statute which forbade any coal owner from mining his coal in such way as to cause the subsidence of certain surface structures. It was clear and admitted that the statute as applied to that case destroyed existing rights of property and contract, which is the antithesis of the case at bar. This Court held that the regulation of the coal company's property went too far and, therefore, constituted a taking without compensation contrary to the Federal Constitution. However, it is significant that this Court there recognized (p. 413) that "[g]overnment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law."

United States v. Causby, 328 U.S. 256 and *Griggs v. Allegheny County,* 369 U.S. 84, only hold that the operation of airplanes in taking off and landing at an airport by low flights over adjacent or nearby property so as to

make the property unusable as a chicken farm or a private residence because of the resulting noise, vibration and danger constituted the taking of an air easement over such property for which just compensation must be paid. No easement whatever for low airplane flights over the plaintiff's property was already in existence in those cases; whereas, in the case at bar, the easement for a public highway in front of plaintiff's property had existed for innumerable years before the gas line was laid in that public highway.

The *Griggs* case does not hold, as petitioner states (Petition, p. 7), that "[W]hile concededly the state at one time acquired some rights to use the surface of petitioner's land 'by constitutional standards it did not acquire enough' to permit use of the sub-surface without payment of compensation therefor."

Petitioner's position in the instant case is that ownership of the land extends from the surface downwards to the center of the earth and upwards indefinitely to the skies and that, therefore, even if an easement for a highway exists over the surface of the land, no use of any area below or above that surface may be made without the payment of additional compensation. If petitioner's position were correct, travel through the air over this country could only have been accomplished by the appropriation of an air easement, with the payment of compensation, over every square inch of land in the 50 states of this nation. If petitioner were right, the Congressional enactments pursuant to which the United States declared that it possesses and exercises sovereignty over the nation's air space and granted to any citizen freedom to travel through the navigable air space, infringe upon

the Constitution of the United States, because no compensation was provided or paid for the appropriation of such airspace. Fortunately, for the progress and advancement of this Country that position is not recognized. On the contrary, this Court, in *United States v. Causby,* 328 U.S. 256, rejected any such thought, saying (pp. 260-261):

> "It is ancient doctrine that at common law ownership of the land extended to the periphery of the universe — *Cujus est solum ejus est usque ad coelum.* But that doctrine has no place in the modern world. The air is a public highway, as Congress has declared. Were that not true, every transcontinental flight would subject the operator to countless trespass suits. Common sense revolts at the idea. To recognize such private claims to the airspace would clog these highways, seriously interfere with their control and development in the public interest, and transfer into private ownership that to which only the public has a just claim."

Petitioner tries to create the impression (Petition, pp. 8-9) that what was done by the Supreme Court of Pennsylvania in the instant case is novel and startling and a major departure from accepted constitutional doctrine. Petitioner proclaims that the decision of the Court below will "be widely practiced" and that a proverbial Pandora's box will be unlocked, unless this Court intervenes. It is manifest, from what has been set forth in this brief, that the decision of the Supreme Court of Pennsylvania is not novel or startling and that, on the contrary, it is in accord with logical and sound decisions of other courts extending back more than a half century.

Petitioner alludes to the beautification proposals being urged upon Congress and conjectures that to accomplish them it might be decided that utility lines and the like should be removed from the surface of the countryside and should be buried beneath the surface. Petitioner theorizes that if national beautification is thus accomplished it will be at the expense of "a relatively few property holders rather than the government bodies or utility companies" who may pass the cost on to the general public. This attempted illustration is absurd and specious. If Congress decides that overhead lines strung along public highways, established by prior condemnation or dedication, should be removed and relocated beneath the surface of such highways, no additional servitude will be imposed on the highways and the abutting properties. Therefore, there would be no reason to justify the payment of additional damages to abutting property owners if wires which had been above the surface of a public highway were placed beneath it. Any allowance of compensation in such circumstances, would be plainly unjust and an unfair toll. The dire consequences and perils which petitioner conjures have not occurred despite the fact that the principle followed by the Supreme Court of Pennsylvania in this case has been the law in other States for over a half century. Any such consequences and perils are a mere figment of petitioner's imagination to intimidate this Court.

The law, we submit, is not permanently inflexible as petitioner would have it declared. As demonstrated by the authorities cited in this brief, the law is flexible and progressive and adapts itself to new conditions and concepts created by the progress of society.

In conclusion, it is respectfully submitted that the decision of the Supreme Court of Pennsylvania that the public easement of a highway includes every reasonable means for the conveyance of persons, the transmission of intelligence and the transportation of commodities which the advance of civilization may render suitable for a highway is correct; that no constitutional right of the petitioner has been violated; that the decision of the Court below is adequately supported by nonfederal grounds; that the Court below has not decided a federal question of substance not heretofore determined by this Court or decided it in a way not in accord with applicable decisions of this Court; and that no federal question is involved in the case at bar. Accordingly, the judgment of the Supreme Court of Pennsylvania should not be disturbed. There is nothing in the instant case that justifies the granting of a writ of certiorari. *Certiorari should, therefore, be denied.*

Respectfully submitted,

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